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U.S. DISTRICT COURT E.D.N.Y.

★ JUN 19 2012 ★

BROOKLYN OFFICE

JEFFREY LIGHTMAN
JEFFREY EINHORN

LAW OFFICES OF
JEFFREY LIGHTMAN
750 LEXINGTON AVENUE
15TH FLOOR
NEW YORK, NEW YORK 10022
www.jeffreylightman.com

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PH: (212) 581-1001
FX: (212) 581-4899

June 14, 2012

BY FAX: 718-613-2693

Honorable Jack B. Weinstein
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: **United States v. Frank DiMattina,**
11 Cr. 705 (JBW)

Dear Judge Weinstein:

I am writing on behalf of defendant Frank DiMattina, to respectfully request that the Court modify the terms of Your Honor's March 31, 2012 Order granting to Mr. DiMattina bail pending appeal to the Court of Appeals. Currently, Mr. DiMattina is released to bail on a \$2 million bond with home detention with location monitoring and permitted leave only for business, church on Sundays, and attorney visits. In discussion with Pretrial Services, the defendant was placed on Global Positioning System (GPS) to ensure his compliance with the court's authorized leave of church, work, and attorney visits.

Mr. DiMattina underwent reconstructive spinal surgery on May 22, 2102 and both his surgeon and two treating physicians recommend aquatic therapy among other treatments for purposes of rehabilitation ("The surgery was only half of Mr. DiMattina's solution. The recommended water therapy and whirlpool therapy is the other half and without it Mr. DiMattina's spine may not heal properly." May 25, 2012 Letter of Dr. John D. McCarthy (enclosed)). Aquatic therapy is simply not possible while Mr. DiMattina wears a GPS device as it cannot be submerged in water. With this application I am requesting that Mr. DiMattina's conditions of release be modified so that he be permitted to wear a traditional electronic monitoring bracelet (which can be submerged in water according to the defendant's pretrial services officer, Anna Lee) and a general curfew as set by pretrial services.

*Approved,
subject to court's
and orders of probation
pre-trial. So ordered
JW 6/14/12*

sl

JEFFREY LICHTMAN

Hon. Jack B. Weinstein

June 14, 2012

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According to Dr. Franco Cerabona, the Chief of Spinal Surgery at New York Downtown Hospital and the doctor who performed the surgery, Mr. DiMattina "has a history of chronic lower back pain and has had two prior lumbar surgeries ... [A]quatic therapy which would include low impact swimming, whirlpool and water based exercises are medically necessary for his rehabilitation and treatment of spinal disorders." May 25, 2012 letter of Dr. Franco Cerabona (enclosed). After a post-operative visit by Mr. DiMattina on June 5, 2012, Dr. Cerabona wrote again that "it is medically indicated that the patient commence aquatic therapy, massage therapy and acupuncture These treatments should begin immediately." June 5, 2012 letter of Dr. Franco Cerabona (enclosed). Additionally, I have enclosed a letter from the Dr. Mario Funicelli, a neurologist who is also treating Mr. DiMattina, who also recommends aquatic therapy.

Regarding the issue of the curfew, as noted above Mr. DiMattina's conditions of release already permit him to work outside his home at his catering businesses. This work often has him out of his house until early morning hours on the weekends and at erratic hours during the week. For these reasons -- and due to the need for aquatic therapy -- we respectfully request that Mr. DiMattina be permitted instead a daily curfew as set and monitored by pretrial services. Most significantly, Officer Lee has confirmed that Mr. DiMattina has been fully compliant with all bail conditions since his initial release on bail in September of 2011 and following his conviction in January of 2012. Officer Lee takes no position on this application; I have not yet heard back from AUSA Dennehy as to the government's position.

Thank you for your consideration on this request; I am available at your convenience for a conference should Your Honor deem it necessary.

Respectfully submitted,



Jeffrey Lichtman

encs.

cc: Jack Dennehy, Esq. (by email)
Assistant United States Attorney

Anna Lee, Pretrial Services (by email)

John D. McCarthy, D.O.
1776 Richmond Road, Suite 5
Staten Island, N.Y. 10306
Tel: (718) 668-9300
Fax: (718) 668-1834

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RICHMOND TOTAL MEDICAL

May 25, 2012

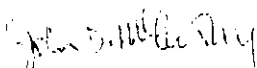
Dear Sir or Madam:

I am writing on behalf of Mr. Frank DiMattina who has been a patient of mine for over ten years. He has been suffering from chronic back and neck pains with significant radiculopathy ever since I met him. He had tried multiple courses of chiropractic therapy, as well as physical therapy but it did not alleviate his discomfort for long.

He finally underwent surgery on May 22, 2012 with Dr. Cerabona. He had a discectomy and fusion performed on his cervical spine which he tolerated well. Mr. DiMattina now requires a prolonged period of rehabilitation and therapy. Due to continued neck and back pain, as well as the delicacy of the surgery, Mr. DiMattina has been advised by his surgeon to avoid any kind of weight lifting or high-impact exercises. It was highly recommended that he start water therapy with low impact swimming and whirlpool therapy. This eliminates the force of gravity on his neck and back and thereby eases pressure on his spine during exercise.

The surgery was only half of Mr. DiMattina's solution. The recommended water therapy and whirlpool therapy is the other half and without it Mr. DiMattina's spine may not heal properly. I feel as though Mr. DiMattina should initiate the recommended therapies as soon as possible to expedite his healing process.

Sincerely,



John D. McCarthy, D.O.
Board Certified in Internal Medicine & Pediatrics

Expert Medical Care

NEW YORK DOWNTOWN ORTHOPAEDIC ASSOCIATES

New York Downtown Hospital
170 William Street, 8th Floor
New York, New York 10038
Phone (212) 312-5922
Fax (212) 312-5470

FRANCO P. CERABONA, M.D.
Chief, Spinal Surgery

May 25, 2012

RE: FRANK DI MATTINA
DOB: 10/11/1967

To Whom It May Concern:

I am the spinal surgeon for patient Frank Di Mattina. Mr. Di Mattina has recently undergone cervical spinal reconstructive surgery (date of surgery 05/22/2012). He also has a history of chronic lower back pain and has had two prior lumbar surgeries. I feel that aquatic therapy which would include low impact swimming, whirlpool and water based exercises are medically necessary for his rehabilitation and treatment of spinal disorders. This is especially important in view of his recent cervical spine surgery. I feel that these treatments should begin immediately. If you require any further information please feel free to contact my office (212) 312-5922.

Thank you.



Franco P. Cerabona, M.D.

NEW YORK DOWNTOWN ORTHOPAEDIC ASSOCIATES

New York Downtown Hospital
170 William Street, 8th Floor
New York, New York 10038
Phone (212) 312-5922
Fax (212) 312-5470

FRANCO P. CERABONA, M.D.
Chief, Spinal Surgery

June 5, 2012

RE: FRANK DI MATTINA
DOB: 10/11/1967

To Whom It May Concern:

I am the spinal surgeon for patient Frank Di Mattina. Mr. Di Mattina has recently undergone cervical spinal reconstructive surgery (date of surgery 05/22/2012). Patient was consulted in our office post operatively on 06/04/12. It is medically indicated that the patient commence aquatic therapy, massage therapy and acupuncture. This is especially important in view of his recent cervical spine surgery. I feel that these treatments should begin immediately. If you require any further information please feel free to contact my office (212) 312-5922.

Thank you,


Franco P. Cerabona, M.D.

FRANCO P. CERABONA, M.D.
170 William Street
New York, NY 10038
Tel: 212-312-5922
NYS License # 147290

JEFFREY LICHTMAN
Attorney At Law
750 Lexington Avenue
15th Floor
New York, New York 10022
(212) 581-1001
(212) 581-4999 (fax)
www.jeffreylichtman.com

FACSIMILE TRANSMISSION COVER SHEET

DATE: June 14, 2012

TO: Hon. Jack B. Weinstein

FAX NO.: (718) 613-2693

FROM: Jeffrey Lichtman, Esq.

CHARGE NO.:

TOTAL NUMBER OF PAGES (INCLUDING COVER): 6

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